

STATE OF LOUISIANA

NO. 18-KH-331

VERSUS

FIFTH CIRCUIT

FRANKIE HOOKIN

COURT OF APPEAL

STATE OF LOUISIANA

July 31, 2018

Susan Buchholz
First Deputy Clerk

IN RE FRANKIE HOOKIN

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE HENRY G. SULLIVAN, JR., DIVISION "M", NUMBER 13-2155

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and Marion F. Edwards, Judge Pro Tempore

WRIT GRANTED FOR A LIMITED PURPOSE; REMANDED

In his writ application, relator, Frankie Hoofkin, seeks review of the April 17, 2018 denial of his application for post-conviction relief (“APCR”) in his district court case number 13-2155 from the Twenty-Fourth Judicial District Court’s. Relator assigns three errors arguing that he is entitled to an evidentiary hearing on his APCR due to trial counsel’s conflicts of interest, allegations of ineffective assistance of counsel, and due process violations under the Fifth Amendment. For the reasons that follow, we grant the writ for the limited purpose of remanding the matter to the district court with the instruction to consider relator’s application for post-conviction relief as a request for an out-of-time appeal.

On April 22, 2013, relator was arrested on five counts of attempted murder in violation of La. R.S. 14:27 (counts 1, 2, 3, 4, 5); one count of aggravated flight from a police officer in violation of La. R.S. 14:108.1 (C) (count 7); and one count of aggravated criminal damage to property in violation of La. R.S. 14:55 (count 6). On April 25, 2016, relator pled guilty to all counts, and the district court sentenced relator to thirty-five years at hard labor for the five convictions of attempted murder, fifteen years for the aggravated flight from a police officer conviction and ten years for the criminal damage to property conviction. The trial court ordered the sentences to run concurrently with each other and with a separate federal sentence. Relator did not file a motion for appeal in the district court. Relator filed his application for post-conviction relief on April 13, 2018, and the district

court dismissed his motion on April 17, 2018 without prejudice because relator must exhaust all appellate rights before pursuing post-conviction relief.¹

The official record reflects that within two years of his guilty pleas and sentencing, relator filed a timely application for post-conviction relief challenging the evidence he contends the state used to cause him to plead guilty and further asserting an ineffective assistance of counsel claim. The district court judge found relator's APCR premature under La. C.Cr.P. art. 924.1.

After sentence has been imposed, a defendant must seek an appeal within the time period specified by La. C.Cr.P. art. 914. *State v. Williams*, 16-32 (La. App. 5 Cir. 8/24/16), 199 So.3d 1205, 1209. Under this article, unless a motion to reconsider is filed, a motion for appeal must be made, whether orally or in writing, no later than "thirty days after the rendition of the judgment or ruling from which the appeal is taken." *See* La. C.Cr.P. art. 914(B). If a defendant fails to move for an appeal within this time, the conviction and sentence become final and the defendant loses the right to obtain an appeal by simply filing a motion for appeal in the trial court. *Williams, supra*. To obtain reinstatement of his right to appeal, the defendant must timely file in the trial court an application for post-conviction relief seeking an out-of-time appeal. *Id.* (citing *State v. Couterman*, 475 So.2d 336 (La. 1985)).

Relator did not timely appeal his convictions and sentences. However, within the statutory two-year time period, relator filed an APCR but did not expressly request an out-of-time appeal. Bearing in mind that *pro se* filings are subject to less stringent standards than formal pleadings filed by lawyers, *State ex. rel. Egana v. State*, 00-2351 (La. 9/22/00), 771 So.2d 638, and in the interest of justice, we grant this writ application for the limited purpose of remanding this matter to the district court, and order the district court to construe relator's APCR as an application for post-conviction relief seeking an out-of-time appeal. *See Quang T. Do v. Vannoy*, 16-157 (La. App. 5 Cir. 5/12/16), 2016 La. App. LEXIS 2314, *11.

Gretna, Louisiana, this 31st day of July, 2018.

FHW
SJW
MFE

¹ The April 17, 2018 order granted relator 45 days from the order to file an application for post-conviction relief requesting an out-of-time appeal under La. C.Cr.P. art 924.1.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
ROBERT M. MURPHY
STEPHEN J. WINDHORST
HANS J. LILJEBERG

JUDGES



FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

CHERYL Q. LANDRIEU
CLERK OF COURT

MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **07/31/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-KH-331

E-NOTIFIED

Terry M. Boudreaux (Respondent)

MAILED

Frankie Hoofkin #711349 (Relator)
Raymond Laborde Correctional Center
1630 Prison Road
Cottonport, LA 71327